

1 David C. Parisi (162248)
Suzanne Havens Beckman (188814)
2 PARISI & HAVENS LLP
212 Marine Street, Suite 100
3 Santa Monica, California 90405
(818) 990-1299 (telephone)
4 (818) 501-7852 (facsimile)
dcparsi@parisihavens.com
5 shavens@parisihavens.com

6 Ethan Preston (263295)
PRESTON LAW OFFICES
7 4054 McKinney Avenue, Suite 310
Dallas, Texas 75204
8 (972) 564-8340 (telephone)
(866) 509-1197 (facsimile)
9 ep@eplaw.us

10 *Attorneys for Plaintiff John Lofton, on his own*
behalf, and behalf of all others similarly situated

11
12 **IN THE UNITED STATES DISTRICT COURT**
FOR THE NORTHERN DISTRICT OF CALIFORNIA
13 **OAKLAND DIVISION**

14 JOHN LOFTON, an individual, on his own
behalf and on behalf of all others similarly
15 situated,

16 Plaintiff,

17 v.

18 VERIZON WIRELESS (VAW) LLC, and
DOES 1-100, inclusive,

19 Defendants.

No. 4:13-cv-05665-YGR

Honorable Yvonne Gonzalez Rogers
Honorable Jacqueline Scott Corley

**FOURTH AMENDED CLASS ACTION
COMPLAINT FOR**

**(1) VIOLATION OF THE INVASION OF
PRIVACY ACT;**

(2) VIOLATION OF THE TCPA; AND

**(3) VIOLATION OF THE UNFAIR
COMPETITION LAW.**

JURY DEMAND

Complaint Filed: June 14, 2012
Removed: December 6, 2013

24 **FOURTH AMENDED CLASS ACTION COMPLAINT**

25 Plaintiff John Lofton ("Lofton" or "Plaintiff"), makes this complaint against Defendant
26 Verizon Wireless (VAW) LLC ("Verizon" or "Defendant"), and Does 1 to 100 (collectively,
27 "Defendants"). Plaintiff's allegations as to his own actions are based on personal knowledge.
28 The other allegations are based on his counsel's investigation, and information and belief.

Introduction

1. This case arises from commission of unlawful acts by Defendants' agents. Verizon uses third-party vendors to collect alleged consumer debts. These vendors record and/or monitor outgoing telephone calls placed in the course of collecting debts without first disclosing the recording and/or monitoring to consumers or obtaining their consent and permission to do so. These vendors also use predictive dialers to make telephone calls to telephone numbers, often without the prior consent of the persons using those cellular telephone numbers. This practice violates California's Invasion of Privacy Act ("IPA") (specifically, Penal Code section 632.7), the Telephone Consumer Protection Act (47 U.S.C. § 227) ("TCPA"), and the unfair competition law (Business and Professions Code 17200) ("UCL").

2. Plaintiff has sustained actual damages and lost property in the form of wasted cellular telephone airtime. Plaintiff seeks statutory damages and injunctive relief on his individual and class IPA claim under Penal Code section 637.2, statutory damages and injunctive relief on his individual and class claims under 47 U.S.C. § 227(b)(3), injunctive relief under his individual and class claims under Business and Professions Code 17203, and an award of attorneys' fees under Code of Civil Procedure section 1021.5.

Parties

3. Plaintiff John Lofton is a natural person residing in San Leandro, California. Lofton brings this action on behalf of himself and others similarly situated.

4. Defendant Verizon Wireless (VAW) LLC is a limited liability company which lists its address with the California Secretary of State as One Verizon Way, Basking Ridge, New Jersey 07920.

5. Plaintiff is currently ignorant of the true names and capacities, whether individual, corporate, associate, or otherwise, of the Defendants sued herein under the fictitious names Does 1 through 100, inclusive, and therefore, sues such Defendants by such fictitious names. Plaintiff will seek leave to amend this complaint to allege the true names and capacities of said fictitiously named Defendants when their true names and capacities have been ascertained. Plaintiff is

1 informed and believes and based thereon alleges that each of the fictitiously named Doe
2 Defendants is legally responsible in some manner for the events and occurrences alleged herein,
3 and for the damages suffered by plaintiff.

4 6. Plaintiff is informed and believes and based thereon alleges that all defendants,
5 including the fictitious Doe Defendants, were at all relevant times acting as actual agents,
6 conspirators, ostensible agents, partners and/or joint venturers and employees of all other
7 defendants, and that all acts alleged herein occurred within the course and scope of said agency,
8 employment, partnership, and joint venture, conspiracy or enterprise, and with the express and/or
9 implied permission, knowledge, consent, authorization and ratification of their co-Defendants;
10 however, each of these allegations are deemed “alternative” theories whenever not doing so
11 would result in a contraction with the other allegations.

12 7. All Defendants, including Does 1 through 100, are collectively referred to as
13 “Defendants” or “Verizon.”

14 8. Whenever this complaint refers to any act of Defendants, the allegations shall be
15 deemed to mean the act of those defendants named in the particular cause of action, and each of
16 them, acting individually, jointly and severally, unless otherwise alleged.

17 **Jurisdiction and Venue**

18 9. This Court may exercise jurisdiction over this case and these parties under Code
19 of Civil Procedure § 410.10. This is a court of general jurisdiction, and the amount in
20 controversy exceeds this court’s jurisdictional minimum. Plaintiff is a California resident. All the
21 proposed Class members are residents of California at the time this Complaint is filed. All
22 Defendants are citizens of California.

23 10. Venue in this County is proper under Code of Civil Procedure section 395.5,
24 because Verizon’s liability arose in the County of Alameda.

25 11. All allegations in this complaint are based on information and belief and/or the
26 documents and information currently available and in the hands of Plaintiff’s attorneys, and are
27 such that additional evidentiary support and detail will be forthcoming after a reasonable
28 opportunity for further investigation or discovery.

The Invasion of Privacy Act

12. The Legislature enacted a comprehensive statutory scheme called the Invasion of Privacy Act (Pen. Code, §§ 630-638) to regulate recording telephone calls, which generally prohibits the same without the informed consent of all parties to the telephone call. The Legislature expressly identified the Act's purpose and set forth its statutory intent:

The Legislature hereby declares that advances in science and technology have led to the development of new devices and techniques for the purpose of eavesdropping upon private communications and that the invasion of privacy resulting from the continual and increasing use of such devices and techniques has created a serious threat to the free exercise of personal liberties and cannot be tolerated in a free and civilized society.

(Pen. Code, § 630.) The IPA prohibits monitoring or recording a telephone communication without the consent of the parties to the communication:

Every person who, without the consent of all parties to a communication, intercepts or receives and intentionally records, or assists in the interception or reception and intentional recordation of, a communication transmitted between two cellular radio telephones, a cellular radio telephone and a landline telephone, two cordless telephones, a cordless telephone and a landline telephone, or a cordless telephone and a cellular radio telephone, shall be punished by a fine not exceeding two thousand five hundred dollars (\$2,500), or by imprisonment in a county jail not exceeding one year, or in the state prison, or by both that fine and imprisonment

(Pen. Code, § 632.7(a).)

13. The Legislature provided for a private right of action for actual damages and civil penalties for violations of the IPA as follows:

- (a) Any person who has been injured by a violation of this chapter may bring an action against the person who committed the violation for [\$5,000] . . .
- (b) Any person may, in accordance with Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure, bring an action to enjoin and restrain any violation of this chapter, and may in the same action seek damages as provided by subdivision (a).
- (c) It is not a necessary prerequisite to an action pursuant to this section that the plaintiff has suffered, or be threatened with, actual damages.

(Pen. Code, § 637.2.)

The Telephone Consumer Protection Act

14. Congress enacted the Telephone Consumer Protection Act in 1991. The TCPA

1 Collecto was recording the call prior to that disclosure. Lofton told Collecto's representative to
2 stop the recording and that he did not consent to be recorded. Collecto's representative stated that
3 she could not stop the recording, and that Collecto recorded all calls for quality assurance
4 purposes. Collecto's representative promised to take Lofton's number off the call list Collecto
5 was using.

6 20. Lofton never received any notice that Collecto recorded its *outgoing* calls until he
7 asked during the June 7, 2012 conversation. On the basis of its representative's June 7, 2012
8 statement, Collecto recorded and/or monitored all of its outgoing calls to Lofton but did not alert
9 or inform Lofton that the calls were being recorded, eavesdropped, monitored and/or tapped
10 until Lofton inquired during the June 7 call.

11 21. In light of the foregoing circumstances, Lofton had a reasonable expectation that
12 Collecto was not recording, eavesdropping, wiretapping and/or monitoring its outgoing calls to
13 Lofton. Lofton did not consent to Collecto's recording of its outgoing calls to Lofton.

14 22. Collecto obtained Lofton's cellular telephone via skip-tracing. Collecto did not
15 have prior express consent to call Lofton's cellular telephone via skip-tracing.

16 23. Collecto frequently uses skip-tracing services to locate telephone numbers used
17 by consumers whom it calls. These skip-tracing services include LexisNexis and/or CBCInnovis.
18 Collecto does not obtain such numbers from the original creditor. When Collecto obtains cellular
19 numbers from a skip-tracing service, it does not have prior express consent to call those
20 numbers.

21 24. Predictive dialing is a computerized method for automatically dialing lists of
22 telephone numbers commonly used in call center operations. A device with predictive dialing
23 functionality can make multiple outbound telephone calls without human intervention, hang up
24 calls that are not answered by a human (i.e., disconnected numbers, answering machines, etc.),
25 and match calls which are answered with an available call center employee. Predictive dialing
26 helps maximize the call center employees' efficiency by eliminating time wasted on unanswered
27 calls. To achieve this efficiency, in a typical situation, a predictive dialer will automatically dial
28 an outbound call. If a person answers the call, the call will then be redirected back to a call center

1 employee “predicted” to be the most likely to be available to answer the call. Hence, sometimes
 2 a person will answer a predictive dialer’s call and hear “dead air” while the predictive dialer
 3 connects the call back to an available employee. Hence, the pause before a call center employee
 4 starts speaking indicates that the call was made with a predictive dialer:

5 Predictive dialers initiate phone calls while telemarketers are talking to other
 6 consumers...In attempting to “predict” the average time it takes for a consumer to
 7 answer the phone and when a telemarketer will be free to take the next call,
 8 predictive dialers may either “hang up” on consumers or keep the consumer on
 hold until connecting the call to a sales representative, resulting in what has been
 referred to as “dead air”.

9 *In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of*
 10 *1991, 2003 Report and Order*, CG Docket No. 02-278, FCC 03-153, ¶146, 18 FCC Rcd. 14014,
 11 14101, 2003 WL 21517853, *51 (July 3, 2003), *available at* [http://hraunfoss.fcc.gov/edocs](http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-03-153A1.pdf)
 12 [_public/attachmatch/FCC-03-153A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-03-153A1.pdf) (“2003 Report and Order”). To be clear, the “dead air”
 13 pause described above is *sufficient* to show that a call was made with a predictive dialer, but is
 14 definitely not *necessary* to show that a predictive dialer was used. Certainly, not every call made
 15 with a predictive dialer involves such a pause, and indeed predictive dialers are designed and
 16 configured to maximize call center efficiency, i.e., the total time call center employees are
 17 speaking with a live person—predictive dialers are typically configured to minimize the total
 18 amount of such “dead air.”

19 25. The FCC has held on two occasions that predictive dialers constitute an
 20 “automatic telephone dialing system” (ATDS) under the meaning of 47 U.S.C. § 227(b)(1)(A)(i).
 21 Even without the FCC’s rulings, it is clear that predictive dialers constitute ATDSs because they
 22 are capable of (1) storing, producing, and dialing lists of arbitrary telephone numbers; (2) loading
 23 more than one telephone numbers into a list of numbers that the dialer can call without further
 24 human intervention; and (3) dialing more than one such telephone number at a time. However,
 25 the key functionality of a predictive dialers is matching available call center employees with
 26 answered calls: this function does not directly relate to storing or calling telephone numbers.
 27 Hence, predictive dialing is not the *sine qua non* of ATDSs: while all predictive dialers are
 28 ATDSs, not all ATDSs are predictive dialers.

26. During all of Collecto's calls, there was a significant pause before Collecto's representative started speaking. In discovery, Collecto has indicated that it called Lofton with its Noble Systems Maestro dialer. The Maestro dialer is a predictive dialer, and is otherwise an ATDS. Collecto has also testified in other civil actions that it has used predictive dialers. Collecto placed each and every call alleged in this complaint with one or more predictive dialers.

27. Verizon is vicariously liable for Collecto's violations of the IPA and TCPA alleged above. Collecto acted as Verizon's agent, and violated the IPA and TCPA in the course of such agency.

Class Certification Allegations

28. **Class Definition:** Lofton seeks to certify two classes and brings this Complaint against the Defendants, pursuant to Code of Civil Procedure section 382, on behalf of himself and the following classes:

The "IPA Class":

All California residents who

- (a) received on their cellular telephone one or more telephone calls from Collecto or any other of third-party vendors which Verizon engaged to collect debts,
- (b) in which such persons made a spontaneous oral communication (i.e., excluding any voicemail greeting or similar recording) in response to Defendants or their Agents (such as Collecto),
- (c) which communication the Agents recorded or monitored or caused to be recorded or monitored without or prior to disclosing or alerting the persons that Defendants were recording or monitoring the telephone call.

The "TCPA Class":

All natural persons residing in the United States who

- (a) received one or more telephone calls from a predictive dialer, operated by Collecto or any other third party vendors which Verizon engaged to collect debts, to their cellular telephone number,
- (b) on or before four years from the date Lofton's original complaint was filed,
- (c) where the number was obtained through skip-tracing or captured by Collecto's or other Verizon' agent's equipment from an

inbound call, but the person never had an agreement with the creditor .

Excluded from the IPA Class and TCPA Class are Defendants, any person which Verizon's record identify as a current or past subscriber, any entity in which Defendants (or Agents) have a controlling interest or which has a controlling interest in Defendants, and any of the Defendants' agents, legal representatives, predecessors, successors, assigns, and employees. Also excluded from the classes are the judge and staff to whom this case is assigned, and any member of the judge's immediate family. Lofton reserves the right to revise the definition of the classes based on facts learned during discovery. Lofton is a member of the classes that he seeks to represent.

29. The members of the IPA Class and TCPA Class can be reasonably identified using information that is kept by Defendants and/or Agents in the usual course of business and/or is in Defendants' control. The calls in controversy can be identified through, e.g., ministerial review of the recordings at issue.

30. **Class Numerosity:** The exact numbers of members of the classes are unknown and are not available to Plaintiff at this time, but Plaintiff believes the numbers exceed the minimum needed to establish numerosity.

31. **Class Commonality:** Common questions of fact and law exist as to all members of the classes and predominate over the questions affecting only individual members of the classes. Identification of the individuals who qualify as a member of the classes will be sufficient to establish liability to the class member.

32. **Typicality:** Plaintiff's claims are typical of the claims of the other members of the classes. Plaintiff is not different in any relevant way from any other member of the classes, and the relief he seeks is common to the classes.

33. **Adequate Representation:** Plaintiff will fairly and adequately represent and protect the interests of the other members of the classes: his interests do not conflict with their interests. Plaintiffs have retained counsel competent and experienced in complex class actions, and they intend to prosecute this action vigorously.

34. **Predominance and Superiority:** The classes alleged in this Complaint are appropriate for certification because class proceedings are superior to all other available methods

for the fair and efficient adjudication of this controversy, since joinder of all members is impracticable. The damages suffered by each individual class member will likely be relatively small, especially given the burden and expense of individual prosecution of the complex litigation necessitated by Defendants' actions. It would be virtually impossible for class members to individually obtain effective relief from Defendant's misconduct. Even if class members themselves could sustain such individual litigation, it would still not be preferable to a class action, because individual litigation would increase the delay and expense to all parties due to the complex legal and factual controversies presented in this Complaint. By contrast, class actions present far fewer management difficulties and provide the benefits of single adjudication, economy of scale, and comprehensive supervision by a single Court. Economies of time, effort, and expense will be fostered and uniformity of decisions will be ensured.

35. **Generally Applicable Policies:** This class action is also appropriate for certification because Defendants have acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the classes as a whole. The policies of the Defendants challenged herein apply and affect members of the classes uniformly, and Plaintiff's challenge of these policies hinges on Defendants' conduct, not on facts or law applicable only to Plaintiff.

36. **Injunctive Relief is Appropriate:** Based on information and belief, Defendants and Agents continue to engage in the improper practices discussed above. Injunctive relief is necessary and appropriate to enjoin Defendants' conduct and to prevent irreparable harm to Plaintiff and class members for which they have no adequate remedy at law.

Class Allegations

37. **Verizon's Agents:** This complaint concerns not only Collecto's IPA and TCPA violations, but also the IPA and TCPA violations committed by any of the other third-party vendors which Verizon engaged to collect debts under a contract materially similar to the contract between Verizon and Collecto ("Agents"). A copy of the relevant portions of Verizon's contract is attached as Exhibit 1. Based on the information Lofton has obtained through discovery to date, he alleges that the relevant Agents include The CBE Group, Inc. ("CBE"),

1 Convergent Outsourcing, Inc. (also known as ER Solutions) (“Convergent”), Valentine &
2 Kebartas, Inc. (“VKI”), Vantage Sourcing, LLC (“Vantage”), and Sunrise Credit Group, Inc.
3 (“Sunrise”), as well as Collecto.

4 38. **The Agents Violate the IPA:** The Agents make outgoing calls to consumers and
5 others in the regular course of the work they perform for Verizon. During the times relevant to
6 this complaint, Collecto and some of the other Agents recorded and/or monitored all of their
7 outgoing calls to consumers in which they sought to collect a debt. The Agents have intentionally
8 installed and/or caused to be installed recording, wire-tapping and eavesdropping equipment on
9 their telephone lines. In addition or in the alternative, the Agents have configured their telephone
10 systems to record outgoing calls.

11 39. The Agents do not disclose to the IPA Class members that they are recording at
12 the start of the call – *or at all* – in some of their outgoing calls. In light of the foregoing
13 circumstances, the IPA Class members had a reasonable expectation that the Agents were not
14 recording, eavesdropping, wiretapping and/or monitoring the calls to the IPA Class members. In
15 light of the foregoing circumstances, the IPA Class members did not and could not consent to
16 recording of the calls which they received from Defendants and/or the Agents.

17 40. **The Agents Violate the TCPA:** The Agents make outgoing calls to consumers
18 and others cellular telephone numbers during the regular course of its business. The Agents place
19 calls to the TCPA Class members using predictive dialers (as well as other automated telephone
20 dialing systems). The predictive dialers are an automatic telephone dialing system; no human
21 manually dialed the cellular telephone numbers which agents called at the time it was made.

22 41. The Agents obtain the TCPA Class members’ cellular telephone via skip-tracing
23 and other means. The Agents do not obtain prior consent to call TCPA Class members’s cellular
24 telephones. In light of the foregoing circumstances, the TCPA Class members did not and could
25 not consent to the calls which they received from Defendants and/or the Agents.

26 42. **Verizon Is Liable for the Agents’ Conduct:** Defendants are vicariously liable
27 for the violations of the IPA and TCPA alleged above. Verizon gave the Agents authority to
28 collect debts on past-due Verizon accounts on Verizon’s behalf, and the Agents recorded the

1 calls to Plaintiff in the course of collecting debts on Verizon's behalf. Further, Verizon knew that
2 its Agents recorded outgoing calls without disclosing the same. Indeed, as set forth below,
3 Verizon's policy instructed the Agents that they did not need to disclose such recording. The
4 Agents acted as Verizon's agents, and violated the IPA in the course of such agency. In addition
5 or the alternative, Verizon advised and encouraged the Agents' IPA violations.

6 43. In addition or the alternative, Verizon conspired to violate the IPA with the
7 Agents. Verizon implicitly and/or explicitly agreed that the Agents would record outgoing calls
8 without disclosure by continuing to employ and assign accounts to the Agents.

9 44. In the addition or the alternative, Verizon assisted and/or aided and abetted the
10 Agents' IPA violations. Verizon paid the Agents in connection with their debt collection
11 activities, and the funds paid to the Agents facilitated, e.g., the purchase and maintenance of the
12 equipment used to record their calls, and the purchase of telephone service used to make the
13 calls. Verizon permitted the Agents to use its name while making debt collection calls. By
14 allowing the Agents to use its name, Verizon facilitated the Agents' collection activities by
15 promoting their ability to initiate and continue more live telephonic conversations and thereby
16 assisted/aided the Agents to record more calls.

17 45. **Verizon Directed Its Agents to Call Skip-Traced Telephone Numbers:**
18 Verizon required the Agents to obtain and call telephone numbers (by skip-tracing or otherwise)
19 which it did not have consent to call. For instance, Verizon's contract with Collecto explicitly
20 states that, "[i]n the event a Placed Account does not include an accurate telephone number,"
21 Collecto must "initiate a minimum of eight (8) Skip Tracing efforts within the first thirty (30)
22 days of receipt of the Placed Account, and a minimum of two Skip Tracing efforts each month
23 thereafter[.]" (VER000057.) The contract also requires Collecto to "[i]nitiate a minimum of eight
24 (8) telephone call attempts in the first thirty (30) days, or until customer contact" and to
25 "[i]nitiate a minimum of two (2) telephone attempts every thirty (30) days thereafter until either
26 customer contact, or end of Placement Period." (VER000056.) Verizon's contracts with CBE
27 (VER002816), Convergent (VER002474), and Sunrise (VER002739) contain similar provisions.

28 46. **Verizon Knew that the Agents Typically Used Automated Dialers to Make**

1 **Calls on Its Behalf:** Verizon has filed portions of its contracts with CBE, Collecto, Convergent,
 2 and Sunrise in this Court which state, e.g., that those Agents are “expected to use reasonable
 3 judgment when interpreting accounts notes and not place automated dialer or broadcast calls to
 4 pagers, cell phones, etc in accordance with federal, state and local laws.” (ECF Nos. 77-4 at
 5 VER000042; 77-5 at VER002724; 77-6 at VER002459; 77-7 at VER002801.) (Verizon’s
 6 contract with VKI and Vantage simply mandates those Agents “shall comply with the provisions
 7 of all applicable federal, state and local laws. . . in performance of this Agreement.” (ECF No.
 8 77-8 at VER002853; 77-9 at VER0005879.) Verizon’s contracts reflect that Verizon knew that
 9 the Agents were likely to use automated dialers to make calls to, e.g., skip-traced telephone
 10 numbers, and that such calls were likely to implicate the TCPA.

11 47. In addition, Verizon knew— given the volume of accounts Verizon assigned to
 12 the Agents, and the amount of skip-tracing required under its contracts—that its Agents needed
 13 to use predictive dialers or automated dialers to economically and profitably perform their
 14 contracts with Verizon. This is evidenced in part by the fact that in at least one circumstances,
 15 VKI skip-traced telephone numbers for one set of accounts in October 2011 and then determined
 16 that it could not efficiently call skip-traced numbers manually and needed to use automated
 17 dialers to perform profitably and economically under its contract with Verizon and that (on
 18 information and belief) Verizon knew that VKI had made the foregoing determination..

19 48. **Verizon Knew that the Agents Recorded Calls Without Disclosing the**
 20 **Recording:** Verizon has produced a declaration from Craig Battinelli dated August 21, 2012
 21 (attached as Exhibit 2) which avers that Verizon’s policy is to “disclose immediately after
 22 identifying themselves on a call that the call may be monitored or recorded for quality purposes”
 23 and that this policy “is expressed to third-party vendors of Verizon Wireless that assist in the
 24 collection of debts on past-due Verizon Wireless accounts,” including Collecto and the other
 25 Agents. (VER000091.) In fact, the written policy authenticated in the August Battinelli
 26 declaration provides that certain calls “may be made without disclosure” of the recording, such
 27 as calls where a non-subscriber “answers the call and advises it is a wrong number.”
 28 (VER000093-94.)

49. There is no rational reason for Verizon to express its “disclosure policy” is to the Agents unless the Agents recorded their outgoing telephone calls in the regular course of business. The only reasonable inferences from the August Battinelli declaration is that (1) Verizon knew the Agents were recording outgoing telephone calls, and that (2) Verizon knew that the Agents did not disclose such recording in every outgoing telephone call to non-subscribers.

50. **Verizon Controlled the Agents’ Communications with Class Members:** Under its contracts with Collecto and the Agents, Verizon tightly controlled the Agents’ operations. As the August Battinelli declaration indicates, Verizon dictated how and when the Agents would disclose that they recorded outgoing telephone calls through the “disclosure policy” alleged above. Under the contracts, the Agents agreed to follow any procedures that Verizon provided for authenticating the identity of, e.g., the person receiving a call before discussing account information. (VER000053.) Verizon also required the Agents to

furnish to Verizon for *its review and approval* all correspondence, telegrams, and other communications that it intends to utilize with respect to the collection of debts owing to Verizon, and any changes to these that may be contemplated in the future.

(VER000055 [emphasis added]. See also VER000051.)

51. **Verizon Controlled the Agents’ Personnel:** Further, the contracts provided Verizon the right to demand that “at any time and for any reason that specific employees, subcontractors, and agents of [the Agents] be removed from” providing services for Verizon. (VER000022.) Verizon also had the right to approve and disapprove any of the Agents’ subcontractors. (VER000019.) Also, the contracts required that the Agents’ personnel who were assigned to collect Verizon accounts “do so exclusively for Verizon.” (VER000053.)

52. **Verizon Controlled the Agents’ Operations:** Verizon’s control over the Agents extended to other areas. Under the contracts, the Agents agreed (1) to conduct background checks and drug tests on all their employees (VER000006); (2) not to store or access Verizon’s confidential information outside the United States without authorization (VER000012); and (3) to return data concerning closed Verizon accounts “in a format and media approved by Verizon”

1 (VER0000052; *see also* VER0000058). Verizon also required the Agents to disclose, assign,
2 and/or license to Verizon

3 all notes, designs, models, prototypes, drawings, data storage media, listings,
4 deliverables, technical data, inventions, improvements, discoveries, computer
5 software (including firmware), and other forms of technology or intellectual
6 property made, conceived, developed or actually or constructively reduced to
7 practice in connection with or pursuant to the terms and conditions of [the
8 contracts.]

9 (VER000016.) Verizon's contracts also (1) controlled when and how often the Agents would
10 communicate with or attempt to locate subscribers (VER000056-57); (2) controlled the Agents'
11 authority to settle delinquent accounts with subscribers (VER000057); and (3) controlled when
12 Agents could litigate against subscribers and prohibited the Agents from threatening to litigate
13 against subscribers (VER000057).

14 **53. Verizon Has the Ability to Terminate the Agents' Services Unilaterally:**

15 Under the operative contracts, Verizon has unrestricted ability to unilaterally terminate the
16 Agents' services. The contracts provide Verizon the right to terminate the Agents' services on
17 thirty (30) days' written notice of "a material breach or default of any of the terms, conditions or
18 covenants" of contracts. (VER000014.) The contracts require the Agents to provide services "at
19 the highest professional standards in the field, to Verizon's satisfaction." (VER000012.) In
20 addition, the contracts provide that "any dispute or controversy relating to whether any Services
21 meet the highest level of performance in the industry shall be decided by Verizon in its
22 reasonable discretion and its decision shall be final, conclusive and binding." (*Id.*)

23 **54.** The contracts call for the Agents to perform the specific tasks identified in
24 "Authorization Letters" provided by Verizon. However, the contracts also provide that
25 "Authorization Letters may be withdrawn at any time in writing by Verizon Wireless, and may
26 be made effective immediately. (VER000052.) In addition to the foregoing, the contracts
27 provided Verizon the ability to terminate an Agent's services by withdrawing all pending
28 Authorization Letters from the Agent.

55. Likewise, the contracts provide that Agents collect on "Placed Accounts." "Placed
Accounts" mean "any past due and/or charged-off Customer account which Verizon, *in its sole*

1 *discretion*, may place with Supplier to enact telephone collections and dunning notices, Skip
 2 Tracing, or other activity on behalf of Verizon pursuant to this Agreement.” (VER000005
 3 (emphasis added).) Moreover, the contracts provide that “Verizon is under no obligation to refer
 4 any particular type, age or minimum number of Customer accounts to Supplier.” (*Id.*) In addition
 5 to the foregoing, the contracts provided Verizon the ability to terminate an Agent’s services by
 6 no longer placing any accounts with the Agent.

7 56. **Apparent Agency:** When Collecto’s representatives called Plaintiff and the other
 8 Class members, they stated they were “with Verizon.” Further, Collecto called Plaintiff from the
 9 telephone number (877) 208-4175. Calls to (877) 208-4175 are answered by an automated voice
 10 that says “Thank you for calling Verizon Wireless.” In contracts with Verizon, Verizon has
 11 explicitly authorized Collecto and the other Agents to use Verizon’s trade names: “Supplier may
 12 use the names . . . “Verizon Wireless” . . . solely for the purpose of identifying a creditor (i) in
 13 communications with a Debtor with respect to a Placed Account in order to collect amounts
 14 outstanding thereon . . .” (VER000017.) Defendants and the Agents called Class members on
 15 their cellular telephones.

16 57. In addition or in the alternative to the foregoing, Plaintiff alleges that the Agents
 17 are “ostensible agents” under Civil Code section 2300. Plaintiff and the Class members
 18 reasonably believed that the Agent representatives who called them were employed by Verizon.
 19 Verizon is liable for the Agents’ IPA violations because it knew that the Agents used Verizon’s
 20 name when calling Class members, but did nothing to prevent Class members from believing
 21 that the Agents were Verizon’s employees (and indeed expressly authorized the Agents to use
 22 Verizon’s name).

23 **FIRST CAUSE OF ACTION:**
 24 **Violation of IPA Against All Defendants**
 by Plaintiff Individually and on Behalf of the IPA Class

25 58. Plaintiff hereby incorporates by reference the allegations contained in all
 26 preceding paragraphs of this complaint. Plaintiff asserts this claim on behalf of himself and the
 27 IPA Class Members.

28 59. The Agents configured their telephone system to record all of their telephone

1 calls. In addition or in the alternative, the Agents installed and/or caused to be installed certain
2 wiretapping, eavesdropping, monitoring and/or recording equipment on all or many of their
3 telephone lines.

4 60. The Agents' policy is to use this equipment (including their telephone systems) to
5 record and/or monitor their outgoing telephone calls. The Agents in fact used this equipment to
6 record and/or monitor their outgoing telephone calls to the IPA Class members' cellular
7 telephones.

8 61. The Agents did not disclose that they were recording and/or monitoring its
9 outgoing telephone calls to the IPA Class members prior to recording and/or monitoring such
10 telephone calls. In light of the foregoing allegations, Lofton and the other members of the IPA
11 Class had an objectively reasonable expectation that the Agents were not recording,
12 eavesdropping, wiretapping and/or monitoring these outgoing calls which the Agents initiated to
13 Lofton and the other members of the IPA Class.

14 62. Defendants' recording and/or monitoring of the outgoing telephone calls to
15 IPAClass members' cellular telephones without their consent violated California Penal Code
16 section 632.7(a).

17 63. Defendants are vicariously liable for the violations of the IPA alleged above.
18 Verizon gave the Agents authority to collect of debts on past-due Verizon accounts on Verizon's
19 behalf, and the Agents recorded the calls to Plaintiff in the course of collecting debts on
20 Verizon's behalf. The Agents acted as Verizon's agents, and violated the IPA in the course of
21 such agency. On information and belief as alleged more specifically above, Verizon knows that
22 the Agents record outgoing calls to cellular telephones without the recipients' consent and does
23 not take action to stop these practices.

24 64. Lofton, on his own behalf, and behalf of the other IPA Class members, seeks to
25 recover statutory damages, as well as injunctive and equitable relief under Penal Code section
26 637.2. Lofton brings this action as a private attorney general, and to vindicate and enforce an
27 important right affecting the public interest. Lofton is therefore entitled to an award of attorneys'
28 fees under Code of Civil Procedure section 1021.5 for bringing this action.

**SECOND CAUSE OF ACTION:
Violation of the TCPA Against All Defendants by Plaintiff Individually
and on behalf of the TCPA Class**

65. Plaintiff hereby incorporates by reference the allegations contained in all preceding paragraphs of this complaint. Plaintiff asserts this claim on behalf of himself and the TCPA Class.

66. The Agents make outgoing calls to consumers and others in the regular course of its business. The Agents called Lofton and the TCPA Class members' cellular telephone numbers.

67. The Agents placed calls to Lofton and class members using predictive dialers or other devices which constitute an ATDS under the meaning of 47 U.S.C. § 227(a)(1). Verizon produced manuals and other discovery which identifies the various dialers the Agents used to make calls to collect Verizon accounts. Excerpts of Verizon's production, together with publicly-available documentation described below, are attached as Exhibit 3 to this complaint. CBE uses the Noble Systems' Maestro dialer, and a device called the "Manual Clicker." Collecto uses several dialers: the Guaranteed Contacts ("GC") dialer integrated into its account note system (FACS), a device called the "SoundBite Cloud Predictive Dialer," and the LiveVox dialer. Collecto also uses the Noble Systems' Maestro dialer. Convergent also uses the GC dialer integrated into the FACS account note system. Vantage uses the LiveVox dialer system, as well as a device called the "SunDial Windows Predictive Dialer." VKI indicates that it also uses the LiveVox dialer. Sunrise uses the "Enghouse/CosmoCall contact center universe platform."

68. The GC dialer is an ATDS and a predictive dialer. Ontario Systems Corporation manufactures the GC dialer: it has both hardware and software components which reside on-site in users' own call centers. One of the pages on Collecto's website touted its "state-of-the-art technology," including a "Predictive Dialer - GC (Guaranteed Contacts)." Likewise, publicly-available documentation for the GC dialer from Ontario Systems describes predictive dialer functionality:

An inbound/outbound contact management dialer designed for complete integration with Artiva and FACS, Guaranteed Contacts™ (GC) provides a highly efficient method of contacting debtors, maximizing productivity by relieving

representatives of the dialing function. Reduce wait times and provide a continual flow of live contacts using:

... Advanced algorithms that pass live accounts directly to account representatives, significantly reducing cost per contact, and boosting contact rates up to 300%

... Outbound dialing modes that enable tailoring activity to client needs

This documentation contrasts the GC dialer with a “Manual Contact System” which “offers customers a solution to dial cell phone inventory for which they do not have the express consent of the consumer on a platform lacking the capacity to predictively dial or store or produce numbers using a random or sequential number generator.” It is reasonable to infer from this documentation that the GC dialer has the capacity to predictively dial or store or produce numbers using a random or sequential number generator.

69. Noble Systems’ Maestro dialer is an ATDS and a predictive dialer. The Maestro dialer has both hardware and software components which reside on-site in users’ own call centers. Noble Systems provides publicly-available documentation for its dialers which states that “[p]redictive dialing is one of several collections dialer modes,” and as well as case studies indicating that Noble’s dialers provide “Outbound Predictive Dialing” functionality.

70. The SunDial Windows Predictive Dialer is an ATDS and a predictive dialer. The SunDial Dialer has both hardware and software components which reside on-site in users’ own call centers. The documentation on the SunDial Dialer provided to Lofton provides the following description of the predictive dialing functionality:

A predictive dialer is a computerized dialing system that dials phone numbers from a database, screens out the majority of answering machines, no answers, busy signals and operator intercepts, transferring real people to the telephone agent. . . . The SunDial Windows Predictive Dialer consists of a Dialer Engine and multiple Agent Workstations running on a local-area network.

71. LiveVox is an outsourced (or “hosted”) software-as-a-service (“SaaS”) automatic dialing provider. LiveVox uses an ATDS and a predictive dialer. Users access and configure LiveVox’s services via the Internet. The LiveVox dialers reside off-site (i.e., in the “cloud”), on LiveVox’s computers and connected telecommunications equipment at LiveVox’s offices. LiveVox’s website states: “LiveVox delivers all outbound dialing modes without the limitations of hardware licenses and telephony infrastructure. Develop predictive, preview or manual dialing

1 campaigns on demand to suit a variety of portfolios.” Moreover, several courts have found that
 2 the LiveVox dialer systems constitute a predictive dialer (or otherwise constitute an ATDS). *See*
 3 *Smith v. Markone Fin., LLC*, No. 13-933, 2015 WL 419005, *3 (M.D. Fla. Feb. 2, 2015); *Davis*
 4 *v. Diversified Consultants, Inc.*, 36 F. Supp. 3d 217, 225-26 (D. Mass. 2014); *Lardner v.*
 5 *Diversified Consultants Inc.*, 17 F. Supp. 3d 1215, 1220-23 (S.D. Fla. 2014); *Echevvaria v.*
 6 *Diversified Consultants, Inc.*, No. 13-4980, 2014 WL 929275, *6-7 (S.D.N.Y. Feb. 28, 2014).

7 72. SoundBite is also a hosted SaaS dialer, provided by Genesys Telecommunications
 8 Laboratories, Inc. SoundBite is an ATDS and a predictive dialer. Publicly-available
 9 documentation from Genesys explicitly describes SoundBite as the “SoundBite Cloud Predictive
 10 Dialer,” and states “SoundBite’s cloud predictive dialer improves agent efficiency and boosts
 11 productivity while reducing costs by offering a wide range of capabilities,” and “allows agents to
 12 spend their time talking with live people by filtering out unproductive calls including voice mail
 13 systems, busy signals, and disconnected numbers resulting in agents only being connected to
 14 calls that are answered by live people.”

15 73. The Enghouse Interactive Contact Center Service Provider (formerly CosmoCall
 16 Universe) is a hosted SaaS dialer. It is an ATDS and a predictive dialer. Publicly-available
 17 documentation for the system describes Sunrise’s Enghouse Interactive Contact Center SP dialer
 18 as “includ[ing] predictive dialing” And otherwise describes predictive dialing functionality:

19 Contact Center: Service Provider includes a state-of-the-art outbound dialer with
 20 an array of campaign management tools. Dialing modes include preview,
 21 progressive, predictive, and IVR. Advanced algorithms based on real-time
 22 massive simulation are used to dynamically control the pacing, enabling
 23 compliance with abandoned call regulations without sacrificing agent
 24 productivity. Virtual Outbound Dialing means outbound agents can be anywhere
 25 and linked campaigns enables organizations to utilize agent resources most
 26 efficiently.

27 74. CBE’s Manual Clicker Application (“MCA”) is a hosted SaaS dialer. It is an
 28 ATDS because it is capable of (1) loading more than one (arbitrary) telephone number into a list
 of numbers that the dialer can call without further human intervention; and/or (2) dialing more
 than one such telephone number at a time. MCA is an application that enables users to upload a
 list (or set of lists) of telephone numbers (defined as “groups”) via a website for storage within

1 the application for subsequent outbound dialing. CBE's documentation indicates that, once a
2 group of telephone numbers is selected for outbound dialing, the call center employee can click a
3 button to initiate dialing of the telephone numbers within the group. However, it is evident from
4 CBE's documentation that the clicking action does not actually invoke the dialing of individual
5 digits. Hence, even if the user clicked MCA's interface very rapidly, it would not cause MCA to
6 dial additional numbers while a call is ongoing. Rather, the MCA system simply queues up and
7 stores multiple clicks internally as a counter for that user within the application. As long as a
8 particular user has clicks "on queue" within MCA, MCA will automatically dial the next number
9 from the list of telephone numbers within the selected group and subtracts one of the clicks
10 queued up for that user. MCA stops dialing telephone numbers for a user when that user's
11 counter of clicks reaches zero. In effect, MCA's click counter enables the user to instruct MCA
12 how many telephone numbers it should dial for that user before the user must click the MCA
13 interface again. MCA functions the same way without regard for the telephone number MCA
14 dials, and does not indicate to the user what actual numbers are dialed.

15 75. Additionally, CBE, Convergent, and Vantage have obtained an Automatic Dial
16 Announcing Devices permit required under Texas law for an "automated dial announcing
17 device" ("ADAD"). These permits are collectively attached to this complaint as Exhibit 4. The
18 relevant Texas statute defines an ADAD, in part, as a device that can "store telephone numbers
19 to be called or produce numbers to be called through use of a random or sequential number
20 generator." Tex. Util. Code § 55.121(1)(A). Hence, these Agents' ADAD permits indicate that
21 their dialers fall under the same statutory language as ATDS.

22 76. Each of the Agents' dialers above constitutes an ATDS, whether or not it
23 constitutes a predictive dialer, because it has the capacities required under 47 U.S.C. § 227(a)(1),
24 *regardless of whether that capacity was used in any particular call. Cf. Satterfield v. Simon &*
25 *Schuster, Inc.*, 569 F.3d 946 (9th Cir. 2009). These dialers do not require a human to manually
26 dial the individual digits of the TCPA members' cellular telephone numbers. Rather, the dialers
27 are able to electronically dial the TCPA Class members' cellular telephones in an automated
28 fashion. Additionally, all these dialers are capable of storing, producing, and dialing arbitrary

1 telephone numbers (including numbers generated with a random or sequential number
2 generator). In particular, all these dialers are capable of (1) loading more than one (arbitrary)
3 telephone numbers into a list of numbers that the dialer can call without further human
4 intervention; and/or (2) dialing more than one such telephone number at a time.

5 77. The Agents do not and did not obtain legally effective prior express consent to
6 call the TCPA Class members cellular telephone numbers. The Agents frequently use skip-
7 tracing services to identify TCPA Class members' cellular telephone numbers. Agents also
8 obtained TCPA Class members' cellular telephone numbers by logging the originating number
9 for any incoming calls. When agents obtain TCPA Class members' cellular telephone number in
10 this manner, they does not have legally effective prior express consent to call those numbers.

11 78. Defendants are vicariously liable for the violations of the TCPA alleged above.
12 Verizon gave the Agents authority to collect debts on past-due Verizon accounts on Verizon's
13 behalf, and the Agents used predictive dialers to call Plaintiff in the course of collecting debts on
14 Verizon's behalf. The Agents acted as Verizon's agents, and violated the TCPA in the course of
15 such agency. Agents, and through vicarious liability, Defendants, violated 47 U.S.C. §
16 227(b)(1)(A)(iii) by placing telephone calls to Lofton and other members of the TCPA Class (1)
17 that were automatically dialed by the agents telephone system; (2) made to a cellular telephone
18 number; (3) which number the agents obtained from a skip-tracing service, and not as the result
19 of the TCPA Class members' transaction with a creditor or alleged creditor.

20 79. Lofton, on his own behalf, and behalf of the other TCPA Class members, seeks to
21 recover statutory damages (including treble damages for willful violation of the TCPA), as well
22 as injunctive and equitable relief under 47 U.S.C. § 227(b)(3), against Defendants. Lofton brings
23 this action as a private attorney general, and to vindicate and enforce an important right affecting
24 the public interest. Lofton is therefore entitled to an award of attorneys' fees under Code of Civil
25 Procedure section 1021.5 for bringing this action.

26 **THIRD CAUSE OF ACTION:**
27 **Violation of the UCL Against All Defendants by Plaintiff Individually**
28 **and on behalf of the IPA and/or TCPA Class**

80. Plaintiff hereby incorporates by reference the allegations contained in all

1 preceding paragraphs of this complaint. Plaintiff asserts this claim on behalf of himself and the
 2 IPA and TCPA Class Members.

3 81. The Agents' conduct violates California Penal Code section 632.7(a) and is
 4 therefore unlawful under the UCL. Defendants are vicariously liable for the Agents' conduct
 5 under the UCL.

6 82. The Agents' conduct violates 47 U.S.C. § 227(b)(1)(A)(iii) and is therefore
 7 unlawful under the UCL. Defendants are vicariously liable for the Agents' conduct under the
 8 UCL.

9 83. Plaintiff and the other IPA Class members and TCPA Class members have
 10 suffered injury in fact and lost property during the course of the foregoing UCL violations in the
 11 form of wasted cellular telephone airtime. Lofton, on his own behalf, and on behalf of the other
 12 Class members, seeks injunctive and equitable relief under Business & Professions Code §
 13 17203, and to recover the costs of the action (including attorneys' fees) under Code of Civil
 14 Procedure section 1021.5.

15 WHEREFORE, Plaintiff John Lofton prays that the Court enter judgment and orders in
 16 his favor and against Verizon and Does 1 to 100 as follows:

- 17 a. An order certifying the classes, directing that this case proceed as a class action,
 18 and appointing Lofton and his counsel to represent the IPA Class and the TCPA
 Class;
- 19 b. Judgment against Defendants, and in favor of Lofton and the other IPA Class
 20 members in the amount of \$5,000 per violation of the IPA as proven at trial;
- 21 c. Judgment against Defendants, and in favor of Lofton and the other TCPA Class
 22 members in the amount of \$1,500 per violation of the TCPA to be proven at trial;
- 23 d. Equitable and injunctive relief, including injunctions enjoining further violations
 24 of the IPA, the TCPA, and the UCL;
- 25 e. An order granting costs and attorneys' fees; and
- f. Such other and further relief as this Court may deem appropriate.

26 Dated: April 8, 2015

By: s/Ethan Preston

David C. Parisi (162248)
 Suzanne Havens Beckman (188814)
 PARISI & HAVENS LLP
 212 Marine Street, Suite 100

1 Santa Monica, California 90405
2 (818) 990-1299 (telephone)
3 (818) 501-7852 (facsimile)
4 dcparsi@parisihavens.com
5 shavens@parisihavens.com

6 Ethan Preston (263295)
7 PRESTON LAW OFFICES
8 4054 McKinney Avenue, Suite 310
9 Dallas, Texas 75204
10 (972) 564-8340 (telephone)
11 (866) 509-1197 (facsimile)
12 ep@eplaw.us

13 *Attorneys for Plaintiff John Lofton, on his*
14 *own behalf, and behalf of all others*
15 *similarly situated*
16
17
18
19
20
21
22
23
24
25
26
27
28

JURY TRIAL DEMAND

Plaintiff hereby demands a trial by jury of all issues so triable.

Dated: April 8, 2015

By: s/Ethan Preston

David C. Parisi (162248)
Suzanne Havens Beckman (188814)
PARISI & HAVENS LLP
212 Marine Street, Suite 100
Santa Monica, California 90405
(818) 990-1299 (telephone)
(818) 501-7852 (facsimile)
dcparsi@parisihavens.com
shavens@parisihavens.com

Ethan Preston (263295)
PRESTON LAW OFFICES
4054 McKinney Avenue, Suite 310
Dallas, Texas 75204
(972) 564-8340 (telephone)
(866) 509-1197 (facsimile)
ep@eplaw.us

*Attorneys for Plaintiff John Lofton, on his
own behalf, and behalf of all others
similarly situated*